

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

OLYMPIC GAME FARM, INC., *et al.*,

Defendants.

Cause No. C18-6025RSL

ORDER GRANTING IN
PART MOTION TO REOPEN
DISCOVERY

This matter comes before the Court on “Plaintiff’s Motion to Reopen Discovery for the Limited Purpose of Conducting a Site Visit.” Dkt. # 244. Having reviewed the memoranda, declaration, and exhibits submitted by the parties, the Court finds as follows:

Discovery in this matter closed in February 2021, with limited exceptions approved by the Court. A year and a half later, plaintiff filed this motion to reopen discovery and conduct a site visit of Olympic Game Farm. The justifications for this late request are that defendants’ expert and veterinarian records suggest that the wolf enclosures and housing arrangements may have changed since plaintiff last visited the site. Plaintiff is concerned that it will be forced to cross-examine defendants’ expert – who has visited the site on a number of occasions -- without having a firm grasp on the current situation at Olympic Game Farm.

1 There are two issues remaining in the case for which a site visit might be relevant. A visit
 2 would allow plaintiff to estimate the volume of bread fed to bears on a summer weekend and to
 3 evaluate the current status of the wolf enclosures.¹ Plaintiff offers no justification for waiting
 4 until now to see how much the bears are fed on a busy day. The Court will assume, however,
 5 that documenting the current status of the wolf enclosures justifies the extension of the
 6 discovery deadline under Fed. R. Civ. P. 16(b).² The access afforded during the site visit will be
 7 commensurate with that need.

10 Plaintiff's motion to reopen discovery is GRANTED in part. Plaintiffs may purchase
 11 admission to the park for a car or two, with the access limited to what any other customer is
 12 authorized to do. Plaintiff shall notify defendants as to the date and time of the visit, and
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16 ¹ Driving through the Game Farm is unlikely to provide any information regarding the care given
 17 to geriatric tigers with renal disease.

18 ² Under Fed. R. Civ. P. 16(b)(4), case management deadlines established by the Court "may be
 19 modified only for good cause and with the judge's consent." The rule **Error! Main Document Only.**
 20 was amended in 1983 to require scheduling orders that govern pre-trial as well as trial procedures. The
 21 purpose of the change was to improve the efficiency of federal litigation: leaving the parties to their own
 22 devices until shortly before trial was apparently costly and resulted in undue delay. Under the 1983
 amendment, once a case management schedule issues, changes will be made only if the movant shows
 "good cause."

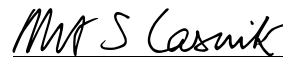
23 Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking
 24 the amendment. The district court may modify the pretrial schedule "if it cannot
 25 reasonably be met with the diligence of the party seeking the extension." Fed. R. Civ. P.
 16 advisory committee's notes (1983 amendment)

26 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). *See also Zivkovic v. S. Cal.*
 27 *Edison Co.*, 302 F.3d 1080, 1087-88 (9th Cir. 2002) (where plaintiff failed to "demonstrate diligence in
 28 complying with the dates set by the district court," good cause was not shown).

1 defendants may choose to monitor the visit or not, as they wish. Any photographs and videos
2 taken during the site visit shall be shared with defendants within seven days of the visit.

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4 Plaintiff has the option of conducting this site visit during the 2022 high season or
5 deferring the visit until after the Washington Supreme Court has resolved the public nuisance
6 issue that was recently certified. Any information gathered during the site visit will
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8 presumptively be for cross-examination or impeachment purposes: it shall not be used to
9 generate new expert opinions.

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12 Dated this 7th day of September, 2022.

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15 Robert S. Lasnik
16 United States District Judge
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